and paragraph 1 of the Schedule to the Courts of Judicature Act and section 9(5). The proviso to section 25 of the Courts of Judicature Act specifically enacts that all such powers of the High Court in the exercise of its jurisdiction as are referred to therein shall be exercised in accordance with any written law or rules of court relating to the same. The proviso limits or qualifies what precedes it and the whole section inclusive of the proviso is to be read in such a manner that they mutually throw light on each other and result in a harmonious construction. The powers conferred on the High Court in the Schedule to the Courts of Judicature Act are only enabling powers empowering the exercise of jurisdiction in respect of the matters specified therein but only in accordance with any written law or rules of court relating thereto. They are merely declaratory of the jurisdiction of the High Court and are subject to restrictions or conditions imposed by legislative provisions pertaining to their exercise and in relation to privative clauses subject to established judicial interpretation that the ouster of jurisdiction can only affect errors of law within the jurisdiction and not without nor if the decision sought to be impugned is a nullity. Section 25(2) of the Courts of Judicature Act does not confer any powers as such but only indicates that there is power to make such orders specified in the Schedule thereto as may be necessary when power so to do is either provided for or is not excluded by some statutory provision and then only within the ambit of its content. We should perhaps add that Mr. Kulasegaran also seeks to rely on the provisions of section 35 of the Courts of Judicature Act relating to the general supervisory and revisionary jurisdiction of the High Court in his argument on this point but promptly agreed and abandoned it when we pointed out that it has no relation whatsoever to the present proceedings. There is therefore neither substance nor merit in the submission made in this respect to question the validity of the decision in *South-East Asia Fire Bricks;*[21] we can find nothing to commend it except perhaps its audacity and misplaced ingenuity and reject the argument advanced.

In the light of all these considerations we see no cause for any justified complaint by the appellant in this matter and accordingly dismiss this appeal with costs. The deposit in court by way of security will be paid out to the respondents equally to account of their taxed costs. The costs of the 1st respondent both here and in the court below will of course be carried on a solicitor and client basis pursuant to the provisions of section 2(b) of the Public Authorities Protection Act, 1948.

Appeal dismissed.

Solicitors: *Ranjit, Thomas & Kula; K. Chandran & Co.*

VETHAGURU v. SIVAGNANACHELVI

[O.C.J. (Ajaib Singh J.) November 7, 1979]
[Seremban — Petition for Dissolution of Marriage No. 14 of 1977]

Family Law — Divorce — Cruelty — Standard of Proof — Whether marriage had irretrievably broken down — Allowance for wear and tear of married life — Conduct must be "of such a grave and weighty nature as to make cohabitation virtually impossible".

The petitioner in this case sought for divorce from his wife on the ground of cruelty. He said that being a Hindu he felt hurt by the refusal of the respondent to wear sarees and cholis suitable to that of a Hindu married woman. He had tried to restrain her from bobbing her hair to ear-length but to no avail. The respondent had indulged in playing hockey too often and had taken part in hockey matches out of town. He alleged that the respondent's parents had abused and humiliated him. As a result of all these he had suffered ill-health and a mental break-down. The petitioner claimed that the marriage had irretrievably broken down.

The respondent on the other hand had denied all these allegations. She stated that the root cause of their matrimonial troubles was her refusal to hand over her pay cheques to the petitioner after the birth of their child.

Held, dismissing the petition: (1) in order to establish the matrimonial offence of cruelty it must be shown that the acts and conduct complained of were grave and weighty to such an extent as to cause danger to the petitioner's health both body or mind or a reasonable apprehension of such a danger;

(2) the standard of proof required to establish cruelty is not beyond reasonable doubt as in a criminal case but is merely to prove it on preponderance of evidence that is on a balance of probabilities;

(3) intention is not a necessary ingredient of cruelty; the question to be decided is whether the respondent's conduct is cruel rather than whether the respondent is a cruel person;

(4) spouses take each other for better or worse and having entered into matrimony they must accept the ordinary wear and tear of married life;

(5) the evidence adduced in this case does not establish that the conduct of the respondent was of such a grave and weighty nature as to make cohabitation virtually impossible; the quarrels were of a trivial nature and largely because of the pay cheques.

PETITION.

N. Ramachandran (*K. Gunaretnam* with him) for the petitioner.

P.G. Segran for the respondent.

Cur. Adv. Vult.

Ajaib Singh J.: The petitioner seeks for divorce from his wife on the ground of cruelty. He alleges that the respondent's conduct towards him amounted to cruelty with the result that their marriage has irretrievably broken down. Giving particulars of cruelty on the part of the respondent the petitioner says that being a Hindu he felt hurt by the refusal of the respondent to wear sarees and cholis suitable to that of a Hindu married woman. Also that he has tried to refrain her from bobbing her hair to ear-length but to no avail, and that the respondent had failed to stop indulging in playing hockey too often and had taken part in hockey matches out of town. He says that the respondent's parents have also abused and humiliated him. Therefore as a result of all these he has suffered ill-health and a mental break-down.

The respondent on the other hand has denied all these allegations. She states that the root cause

of their matrimonial troubles was her refusal to hand over her pay cheques to the petitioner after the birth of their child. She had already handed over to him a total of over $17,000 of her salary from the date of her marriage to the petitioner in February 1975. After the birth of the child in December 1976 she refused to hand over her pay cheques to the petitioner as she felt insecure of herself and of the future of her child.

In order to establish the matrimonial offence of cruelty it must be shown that the acts and conduct complained of were grave and weighty to such an extent as to cause danger to the petitioner's health both body or mind or a reasonable apprehension of such a danger. The standard of proof required to establish cruelty is not beyond reasonable doubt as in a criminal case but is merely to prove it on preponderance of evidence that is on a balance of probabilities. Intention is not a necessary ingredient of cruelty. The question to be decided is whether the respondent's conduct is cruel rather than whether the respondent is a cruel person.

It is in the light of these principles that the present case has to be decided. On the evidence that has been adduced in this case I have come to the conclusion that the petitioner has failed to prove cruelty on the part of the respondent. The parties were married in February 1975 and the respondent has been handing over her pay cheques to the petitioner over the years. There was the evidence of the respondent which I accept that the petitioner was throughout very tight with his money and she had little liberty to use any amount of her salary for herself. She earned a salary of about $700 per month which she handed over to the petitioner who in turn gave her $100 per month as allowance out of which she had to pay for her daily necessities and expenses in the school canteen. Whenever she enquired about the accounts the petitioner would become angry and put her off. The petitioner would be annoyed if the pay cheques were not handed over to him in time and eventually when the respondent stopped handing over the pay cheques the quarrels became more intense.

I accept the evidence of the respondent that the petitioner's conduct was the cause of their matrimonial troubles. The petitioner does appear to have a greater affection for the respondent's salary rather than for his wife or his child. He alleged in his petition that he suffered ill-health and that his efficiency at work as a doctor in Tampin was also adversely affected by the conduct of the respondent. The evidence however does not support this. During the time that they lived together the petitioner had taken only two days medical leave for a common cold and he was also being considered for a promotion.

Spouses take each other for better or worse and having entered into matrimony they must accept the ordinary wear and tear of married life. The evidence adduced in this case does not establish that the conduct of the respondent was of such a grave and weighty nature as to make cohabitation virtually impossible. Their quarrels were of a trivial nature and largely because of the pay cheques.

In the circumstances therefore I find that the petitioner has failed to prove his case and his petition is accordingly dismissed with costs to be taxed. The question of maintenance for the respondent and custody of the child will be considered in chambers at a later date.

Order accordingly.

Solicitors: *Gunaretnam & Co.; Manuel & Segran.*

THERESA TEH v. LUKE LIM (& 2 OTHER PARTIES CITED)

[O.C.J. (Ajaib Singh J.) November 9, 1979]
[Seremban — Petition for Divorce No. 13 of 1977]

Family Law — Divorce — Cruelty on husband's part — Wife's adultery — Suppression of fact of adultery by petitioner/wife — Discretionary bar to matrimonial relief — Exercise of court's discretion in husband's favour.

The petitioner in this case sought divorce from her husband on the ground of cruelty. In support of her case she produced several police reports and medical certificates. The respondent had not seriously challenged her allegations of assault but said that he had tried to stop her from going out late at night.

The respondent in turn alleged that the petitioner had committed adultery with two persons cited in his cross-petition. He said that he had heard about his wife's association with one Koh, the first party cited, and as for the second party cited, one Tan, he had seen him living together with his wife and one younger daughter in Singapore. The petitioner denied all these allegations.

The respondent claimed for damages against the two parties cited.

Held: (1) the petitioner having proved cruelty against the respondent she would be entitled to a *decree nisi* but she had wilfully and deliberately suppressed the fact of her own adultery with the second party cited. This meant that there was a discretionary bar to the matrimonial relief which she sought;

(2) the court's discretion should be exercised in favour of the respondent as he had proved adultery against the petitioner and as there was no bar to the relief which he sought. The respondent would therefore be granted a *decree nisi* to be made absolute after three months;

(3) the respondent was not altogether free from blame for having placed his wife in a position where she had an opportunity of having affairs with other men. Damages would therefore not be ordered against the parties cited.

PETITION FOR DIVORCE.

N. Ramachandran for the petitioner.

John Fernandez for the respondent.

Cur. Adv. Vult.

Ajaib Singh J.: I shall deal with the petitioner's case first. She seeks divorce from her husband on ground of cruelty. In support of her case she has given evidence herself and has produced several police reports and medical certificates. The respondent has not seriously challenged her allegations of assault but says that he had tried to stop her from going out late at night. On the evidence before me I am quite satisfied that the petitioner had proved her allegations of assault against the respondent and has thus proved cruelty against him.

The respondent in turn has alleged that the petitioner has committed adultery with two persons whom